

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL JAY PEREZ,

CASE NO. 2:21-cv-00095-LK

Plaintiff,

ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S  
PETITION FOR WRIT OF HABEAS  
CORPUS AD TESTIFICANDUM

KATHRYN GRAY et al.,

## Defendants.

This matter comes before the Court on Plaintiff Daniel Perez's Petition for a Writ of Habeas  
s Ad Testificandum. Dkt. No. 119. Defendants do not oppose Mr. Perez's petition. Dkt. No.  
Having considered the petition and the remainder of the relevant record, the Court denies Mr.  
s petition with leave to renew closer to the scheduled trial date. In the meantime, the Court  
urges the parties to participate in the Western District of Washington's Local Civil Rule 39.1  
ative dispute resolution program.

## I. BACKGROUND

Mr. Perez initiated this civil rights lawsuit *pro se* and *in forma pauperis* (“IFP”) in early 2021, challenging Defendants’ allegedly retaliatory conduct during his ongoing incarceration at

1 the Monroe Correctional Complex (“MCC”), culminating in his transfer out of E-Unit. *See* Dkt.  
 2 Nos. 1, 5, 42. On March 30, 2023, the Court adopted in part the Report and Recommendation of  
 3 United States Magistrate Judge David W. Christel regarding Defendants’ motion for summary  
 4 judgment, allowing some of Mr. Perez’s First Amendment retaliation claims to proceed against  
 5 Defendant Kathryn Grey. *See generally* Dkt. No. 109. Following the Court’s order on summary  
 6 judgment, Mr. Perez retained counsel in this case. Dkt. No. 111. And on May 23, 2023, the Court  
 7 set a trial for October 30, 2023. Dkt. No. 116.

8 On July 20, 2023, Mr. Perez filed the instant petition, seeking a writ of habeas corpus ad  
 9 testificandum requiring the Washington Department of Corrections and Warden of the MCC to  
 10 bring him and his fellow incarcerated witness Jamall Baker to the federal courthouse in Seattle for  
 11 trial. Dkt. No. 119; *see* 28 U.S.C. § 2241(c)(5). Mr. Perez further requests that they both be  
 12 permitted to wear civilian clothes, and that unless Mr. Perez presents a security risk during trial,  
 13 he be permitted to remain “un-handcuffed and un-shackled in the presence of the jury,” to sit at  
 14 the counsel table, and to not be “escorted by . . . security personnel in the presence of the jury[.]”  
 15 Dkt. No. 119 at 2. Defendants do not object to Mr. Perez’s petition except to indicate that they do  
 16 not wish to be charged for the costs of transporting Mr. Perez and Mr. Baker should they prevail  
 17 at trial. Dkt. No. 121; *see also* Dkt. No. 122 (holding that Defendants’ request for relief is not  
 18 properly before the Court).

19 After Mr. Perez filed his petition, however, the Court continued the October trial date to  
 20 December 4, 2023 due to a scheduling conflict with a criminal trial. Dkt. No. 120 at 1–2. The Court  
 21 noted that this continuance will affect the requests for relief in Mr. Perez’s petition; specifically,  
 22 the dates on which he asks that he and Mr. Baker be produced for trial. *Id.* at 1. Accordingly, the  
 23 Court directed the parties to inform the Court if the new dates “are incorrect or otherwise  
 24

1 problematic.” *Id.* at 2. Defendants indicated in their response that they do not object to the new  
 2 pretrial and trial dates, Dkt. No. 121, but Mr. Perez did not file a reply stating his position.

## 3 II. DISCUSSION

### 4 A. Legal Standard

5 “[I]mprisonment suspends [a] plaintiff’s usual right to be personally present at judicial  
 6 proceedings brought by himself or on his behalf.” *Hernandez v. Whiting*, 881 F.2d 768, 770 (9th  
 7 Cir. 1989). However, district courts have the “power to issue a writ of *habeas corpus ad*  
 8 *testificandum* to secure the testimony of a state prisoner witness[.]” *Wiggins v. Alameda Cnty.*, 717  
 9 F.2d 466, 468 n.1 (9th Cir. 1983) (per curiam) (citing *Ballard v. Spradley*, 557 F.2d 476, 480 (5th  
 10 Cir. 1977)); *see also* 28 U.S.C. § 2241(c)(5). When deciding whether to issue a writ of habeas  
 11 corpus ad testificandum, courts consider (1) “whether the prisoner’s presence will substantially  
 12 further the resolution of the case”; (2) “the security risks presented by the prisoner’s presence”;  
 13 (3) “the expense of the prisoner’s transportation and safekeeping”; and (4) “whether the suit can  
 14 be stayed until the prisoner is released without prejudice to the cause asserted.” *Id.* (quoting  
 15 *Ballard*, 557 F.2d at 480); *see also* *Paugh v. Flores*, 771 F. App’x 801, 802 (9th Cir. 2019); *Ruiz*  
 16 *v. Nevada Dep’t of Corr.*, No. 3:17-CV-00643-RCJ-CSD, 2023 WL 3355583, at \*1 (D. Nev. Apr.  
 17 21, 2023).

### 18 B. The Court Denies Mr. Perez’s Petition Without Prejudice to Renew

19 Despite citing the four factors listed above in his petition, Dkt. No. 119 at 2–3, Mr. Perez  
 20 fails to explain why any of these factors are satisfied in this case. The petition purports to rely on  
 21 “the attached Declaration of Darryl Parker and all files, records, and proceedings herein,” *id.* at 1,  
 22 but no declaration is attached, nor is the Court obligated to “search for evidence or manufacture  
 23 arguments for a plaintiff.” *Ayers v. Richards*, No. C08-5390 BHS/KLS, 2010 WL 4366069, at \*2  
 24 (W.D. Wash. Aug. 3, 2010), *report and recommendation adopted*, No. C08-5390-BHS, 2010 WL

1 4365555 (W.D. Wash. Oct. 28, 2010); *see also Ramsey v. Muna*, 819 F. App'x 505, 507 (9th Cir.  
 2 2020) (courts “are not like pigs, hunting for truffles buried in briefs[,] and cannot manufacture  
 3 arguments for a[ litigant]” (cleaned up)).

4 Regardless, the Court need not resolve Mr. Perez’s petition at this relatively early juncture  
 5 nearly four months ahead of trial. *See, e.g., Smith v. Holbrook*, No. 4:18-CV-5108-RMP, 2019 WL  
 6 13246833, at \*1 (E.D. Wash. Apr. 17, 2019) (denying plaintiff’s motion for writ of habeas corpus  
 7 ad testificandum with leave to renew within two months of trial); *Pinson v. Dukett*, No. CV-19-  
 8 00422-TUC-RM, 2023 WL 2463786, at \*4 (D. Ariz. Mar. 10, 2023) (finding plaintiff’s requests  
 9 for writs of habeas corpus ad testificandum to be premature when filed prior to the joint proposed  
 10 pretrial order deadline). Because the Court has continued the trial date and remaining pretrial  
 11 deadlines in this case, it will provide Mr. Perez another opportunity to address these factors by  
 12 filing a renewed petition closer to the trial date.

13 **C. The Parties Are Encouraged to Participate in Mediation**

14 Given the new mediation deadline of October 5, 2023, Dkt. No. 120 at 2, the Court  
 15 encourages the parties to participate in the Western District of Washington’s alternative dispute  
 16 resolution program, *see* LCR 39.1(a), (c). Should they seek a formal referral under Local Civil  
 17 Rule 39.1(c)(1)–(2), they may file a request on the docket at any time. And in the event that the  
 18 parties would like to request a pro bono mediation, they may do so by completing and signing the  
 19 relevant form. *See* LCR 39.1(c)(4); Request for Pro Bono Mediation Form, available at:  
 20 <https://www.wawd.uscourts.gov/sites/wawd/files/RequestforProBonoMediation.pdf>.

21 **III. CONCLUSION**

22 For the reasons discussed herein, the Court denies Mr. Perez’s petition for habeas corpus  
 23 ad testificandum without prejudice. Dkt. No. 119. Should Mr. Perez renew his petition, he must  
 24 do so no earlier than October 5, 2023 and no later than November 9, 2023. A renewed petition

1 must address the relevant factors with respect to both Mr. Perez and Mr. Baker, and must also  
2 explain whether Mr. Baker (1) is willing to testify at trial and (2) has actual knowledge of relevant  
3 facts.

4

5 Dated this 15th day of August, 2023.

6   
7 Lauren King  
8 United States District Judge